

Tuesday, September 2, 2008

Division One

**A117111 – Gaetano Zanelli, v. Thomas McGrath.**

The judgment is affirmed. Costs are awarded to respondent. Marchiano, P.J., We Concur: Margulies, J., Needham, J. (Certified for Publication.)

**A122031 – Damian H., v. The Superior Court of Contra Costa, Contra Costa County Children and Family Services Bureau. R.P.I.**

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 897; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).) Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A119751 – The People, v. Charles Martin Seelig.**

The order revoking appellant's probation and the sentence imposed on him are both affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

**A119591 – The People, v. Luis Alberto Borja.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A116873 – Great American Insurance Company, v. ST Paul Fire and Marine Insurance Company.**

The judgment is affirmed. Costs on appeal are awarded to respondent Great American. Needham, J., We Concur: Jones, P.J., Reardon, J.<sup>1</sup> (Not for Publication.)

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<sup>1</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 2, 2008(Continued)

**A117186, A117187, A117334 – Great American INS. CO. of New York et al., v. Fireman’s Fund INS, CO., et al.**

The summary judgments entered in favor of Fireman’s Fund and Underwriters are reversed, as is the order granting costs and fees in favor of Underwriters. Great American is entitled to recover costs on appeal from Fireman’s Fund and Underwriters, and RSI is entitled to recover costs on appeal from Fireman’s Fund. Needham, J., We Concur: Jones, P.J., Reardon, J.<sup>2</sup> (Not for Publication.)

Wednesday, September 3, 2008

Division One

**A119661 – In re T.H., a Person Coming Under the Juvenile Court Law. The People, v. T.H.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A119146 – In re S.M. et al., Persons Coming Under the Juvenile Court Law. San Francisco County Department of Human Services, v. M.G.**

The disposition orders approving long-term placement as the permanent plan for the children and terminating reunification services to appellant are reversed and the matter is remanded to the juvenile court with instructions to proceed in conformity with the provisions of the ICWA. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A119449 – In re E.T., a Person Coming Under the Juvenile Court Law. Contra Costa Department of Children and Family Services, v. R.T.**

The appeal is dismissed as moot. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

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<sup>2</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 3, 2008(Continued)

Division Three

**A119715 – The People, v. Clark Thomas Bremner.**

The judgment is affirmed and the case is remanded so that the trial court can file a new Order of Commitment nunc pro tunc correctly designing defendant's convictions as misdemeanors. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

Division Five

**A120301 – The People, v. Jesus Samuel Perez.**

We find no arguable issues on appeal and affirm the judgment. Reardon, J.,<sup>3</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A118672 – The People, v. Reynaldo Pedro Cuenca.**

The sentence for count two, child abuse, is stayed pending finality of the judgment and service of sentence on count one, such stay to become permanent upon completion of the sentence as to count one. The superior court is directed to prepare an amended abstract of judgment reflecting the imposition and stay of the sentence on count two, and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed. Reardon, J.<sup>4</sup> We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, September 4, 2008

Division Two

**A120694 – The People, v. Cheri Marie Castagne.**

By The Court: The opinion in the above-entitled matter filed on August 27, 2008, was not certified for publication in the Official Reports. For good cause, the request for publication is granted. Pursuant to California Rules of Court, rules 8.1105 and 8.1120, the opinion in the above-entitled matter is ordered certified for publication in the Official Reports. Kline, P.J. (Certified for Publication.)

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<sup>3</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>4</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, September 4, 2008(Continued)

Division Four

**A120105 – The People, v. Fleming Smith III.**

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A117037 – The People, v. Terrance Leo Bolton.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A118736 – In re C.M., a Person Coming Under the Juvenile Court Law. The People, v. C.M.**

In all other respects, the judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A118461 – Michael La Sala, v. Bally Total Fitness Corporation et al.**

By The Court: Plaintiff's petition for rehearing is denied. The opinion filed August 11, 2008, is modified as follows: (See Order.) Reardon, Acting P.J. (Not for Publication.)

Friday, September 5, 2008

Division Four

**A120134 – Scott Rainey, v. California Department of Transportation.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A117309 – Rose Ann O'Hagin, v. O'Hagin's Inc.**

The judgment is reversed. Appellant shall receive her costs on appeal. Reardon, J.<sup>5</sup> We Concur: Jones, P.J., Needham, J. (Not for Publication.)

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<sup>5</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 5, 2008(Continued)

**A119551 – Dwayne Pettway, v. Janet Ross et al.**

The matter is remanded to allow the trial court to recalculate the amount of costs awarded to Ross and the decide whether, based only on that recalculation, the amount of the judgment in Ross's favor should be modified. In all other respects, the judgment is affirmed. Needham, J. We Concur: Jones, P.J., Reardon, J.<sup>6</sup> (Not for Publication.)

Monday, September 08, 2008

Division One

**A118370 – Harry J. Williby, v. John F. Kennedy University et al.**

The judgment is affirmed. Marchiano, P.J., We Concur: Swager, J. Jenkins, J. (Not for Publication.)

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<sup>6</sup>Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, September 9, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Annie Reasoner, Deputy Clerk; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

- A120267      In re W.M., a Person Coming Under the Juvenile Court Law  
Mendocino County Department of Social Services v. G.W.  
Cause called. Caroline Todd argued for appellant G.W. Sandra Applegate argued for respondent Mendocino County Department of Social Services. Cause submitted.
- A118006      Christopher Appleton  
v.  
Pin Lian Tu  
Cause called. Appellant Pin Tu, appearing by telephone conference, argued in propria personam. Tony Boskovich argued for respondent Appleton. Cause submitted.

Court adjourned at 10:01 a.m.

Tuesday, September 9, 2008

Division Two

**A116151 – Steve Rossa et al., v. D.L. Falk Construction, INC.**

The order is reversed to the extent it awarded attorneys' fees and expert witness fees in the amount of \$681,000, and the matter is remanded for further proceedings consistent with this opinion. Falk is awarded costs on appeal. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A115400 – Phoenix American Incorporated, Lease Management Associates, Inc., et al., v. W. Corey West.**

The judgment is affirmed. Kline, P.J., I Concur: Lambden, J. (Not for Publication.)

**A115400, *Phoenix American Incorporated, et al. v. West*. Dissenting Opinion of Haerle, J.**

I respectfully disagree. I submit that "relevance" is very often a matter of degree in different, albeit related, lawsuits. That is particularly so here, bearing in mind the major differences between the two actions in terms of (a) the parties involved on the PAI-RPI-RPC-Constantin side of the litigation and (b) the fact that possible fraudulent conduct by PAI was but one of many, many issues in the successor liability/declaratory relief part of that litigation. Haerle, J. (Not for Publication.)

Division Four

**A121939 – In re J1 et al., Persons Coming Under the Juvenile Court Law. Dominique T., v. Superior Court of San Francisco County, San Francisco Department of Human Services. R.P.I.**

The petition is denied on the merits. (§ 366.26, subd. (l); rule 8.452(i)(l).) The request for stay of the section 366.26 hearing, which is set for October 8, 2008, is denied, and our decision is final as to this court immediately. (Rule 8.264(b)(3).) Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A121772 – The People, v. Kenyatta Pearson.**

The judgment affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 10, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J., and Jenkins, J.; and F. Castuera, Deputy Clerk.

A119344     Hartford Accident and Indemnity,  
              v.  
              Pacific Gas and Electric,  
Cause called and argued by Larry Willis, counsel for appellant, and Gary Simms,  
counsel for respondent. Cause ordered submitted.

At this point, McGuiness, P.J. left the bench and Pollak, J. joined the bench. Pollak, J. presided over the next case.

A119490     Murphy, Pearson, Bradley & Feeney et al.,  
              v.  
              Helen Lynch,  
Cause called and argued by Carol Anne Jasinski, counsel for appellant, and Allison  
Lane Cooper, counsel for respondent.. Cause ordered submitted

At this point, McGuiness, P.J., entered the courtroom and joined the bench. Jenkins, J. was present but did not participate in argument of the next case.

A116491     Tricon Construction,  
A117022     v.  
              Liberty Union High School,  
Cause called and argued by Gregory Alan Wedner, counsel for appellant, and Jay  
Allen Eisen, counsel for respondent. Cause argued and submitted.

At this point, McGuiness, P.J., left the courtroom. Pollak, J. presided over the last case.

A118435     Eric Van Scoy,  
              v.  
              Valero Oil Company.  
Cause called and argued by Charles Kinney, counsel for appellant, and Frank Tatum,  
counsel for respondent. Cause ordered submitted.

COURT ADJOURNED



Wednesday, September 10, 2008(Continued)

Division Five

**A114016 – Forough Nadaf-Rahrov, v. Neiman Marcus Group, Inc. et al.**

The judgment is reversed except as to Butler. Summary adjudication of the retaliation and age discrimination claims is affirmed; the appeal is dismissed as to summary adjudication of the Labor Code section 132a and related wrongful termination claims; and summary adjudication of all other claims is reversed. The discovery order is vacated and remanded for reconsideration. Nadaf-Rahrov shall receive her costs on appeal. Reardon, J.<sup>7</sup> We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

**A117325 – County of Humboldt, Robert C. McKee et al., Linda Hill, as Assessor, etc.**

By The Court: It is ordered that the opinion filed herein on August 15, 2008, be modified as follows: (See Order.) Simons, J. Acting P.J. (Certified for Publication.)

Thursday, September 11, 2008

Division One

**A117183 – Michael Bock et al., v. Brian Brakesman et al.**

The judgment is affirmed insofar as it quiets fee title in favor of the Brakesmans. The portion of the judgment requiring complete removal of the carport is modified to require removal of that part of the carport that encroaches on the Brakesmans' land and, as modified, that portion of the judgment is affirmed. The balance of the judgment is reversed for a determination of an equitable easement based on balancing the hardships. The parties shall bear their own costs on appeal. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

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<sup>7</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, September 11, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Fred Abad, Deputy Clerk, and CHP Officer Kevin Bartlett, Bailiff.

Calendar called. Woodruff v. State of California: Appellant filed a letter on September 8, 2008 waiving oral argument. Joseph v. San Francisco Housing Authority: Matter continued. Justice Marchiano announced the absence of Justice Margulies for oral argument and asked all counsel for waiver of her presence or continue to the court's next calendar. All counsel waived the presence of Justice Margulies.

A120449 People,  
v.  
K.H.

Cause called and argued by Peter Meadow, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, September 11, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Fred Abad, Deputy Clerk, and CHP Officer Kevin Bartlett, Bailiff.

Justice Marchiano announced the absence of Justice Margulies for oral argument and asked all counsel for waiver of her presence or continue to the court's next calendar. All counsel waived the presence of Justice Margulies.

- A119607     August Fay,  
                 v.  
                 Bruce May.  
Cause called and argued by Bruce May, appellant in propria persona, and Carla Fay, argued on behalf of respondent August Fay. Cause ordered submitted.
- A119018     Joseph Grosser, et al.  
                 v.  
                 Leroy Moyer.  
Cause called and argued by Corey Evans, counsel for appellant, Maureen Bryan, counsel for respondents. Cause ordered submitted.

Court adjourned.

Thursday, September 11, 2008(Continued)

Division Three

**A121151 – The People, v. Damon Brown.**

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

**A114474 – The People, v. Robert Todd Myers.**

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A116397 – The People, v. Victor Manuel Cerda.**

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A116806 – The People, v. Mark Brackett.**

We remand for resentencing. On remand, the trial court is directed to exercise its discretion in determining whether to grant or deny probation. (See *People v. Bolton* (1979) 23 Cal.3d 208, 216.) The trial court is also directed to clarify the basis for its sentencing decision with respect to sexual battery conviction on count 2. The trial court is further directed to prepare an amended abstract of judgment, including the sexual battery conviction on count 2, and reflecting whether the sentence on this count is stayed pursuant to section 654. A copy of revised abstract of judgment shall be transmitted to the Department of Corrections and Rehabilitation. In all other respects, we affirm the judgment. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A117770 – Citibank (South Dakota), N.A., v. Robert C. Sam Walker.**

The order granting the motion to compel arbitration is affirmed. Citibank is entitled to its costs on appeal. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Friday, September 12, 2008

Division One

**A116967 – The People, v. Merton George Yahn.**

The superior court is directed to prepare a corrected commitment order providing, in accordance with section 6604, that defendant is committed for an indeterminate term to the custody of the State Department of Mental Health. In all other respects, the judgment is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Four

**A120447 – In re A.R., a Person Coming Under the Juvenile Court Law. The People, v. A.R.**

The “[n]o gang associations” condition of probation is modified as follow: “You are not knowingly associate with any gang members, participate in any gang activities, possess or wear any gang colors, clothing, signs, insignias or paraphernalia. The term gang means a criminal street gang as defined in Penal Code section 186.22.” As so modified, the order is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A120267 – In re W.M., a Person Coming Under the Juvenile Court Law. Mendocino County Department of Social Services, v. Geri Ann W.**

The order if the juvenile court terminating appellant’s parental rights is conditionally reversed and the matter is remanded to the juvenile court with directions to order the Department to provide proper notice of the proceedings under the ICWA to each of the relevant tribes or to the BIA. If, after receiving sufficient notice, no tribe indicates that the child falls within the meaning of ICWA, then the juvenile court shall reinstate the order terminating parental rights. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A1177487 – The People, v. Ted Steven Bator.**

We affirm the judgment. Reardon, J.<sup>8</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

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<sup>8</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, September 15, 2008

Division One

**A118434 – Song X. Sun et al., v. City of Oakland.**

The judgment is affirmed. Swager, J., We Concur: Marchiano, P.J., Margulies, J.  
(Certified for Publication.)

Division Two

**A118839 – The People, v. Anthony Joseph Buentipo.**

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A117310 – James E. Davis, v. California Culinary Academy, Inc.**

For the foregoing reasons, appellant has failed to show the existence of a triable issue as to whether CCA lacked good faith or with respect to any other material fact. Accordingly, the grant of summary judgment is affirmed. Costs on appeal are awarded respondent. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Monday, September 15, 2008

The Court convened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Smith and S. Wheeler, Deputy Clerk.

A113740 Ryan May-Carmen, Minors, etc., et al.  
v.  
Dyncraft Industries, Inc., et al.  
Cause called and argued by Mark L. Webb, counsel for appellants, and Joanne Early and Robert K. Phillips, counsel for respondents. Cause ordered submitted.

A119046 Alexis Giraldo,  
v.  
California Department of Corrections.  
Cause called and argued by Gregory Scott Walston, counsel for appellant, and Jose Zelidon-Zepeda, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A119101 Leua Khamvan,  
v.  
Western Environmental Consultants.  
Cause called and argued by Morgan Smith, counsel for appellant, and Julie M. Chopourian, counsel for respondent. Cause ordered submitted.

A118082 Harry D. Bonner,  
v.  
City and County of San Francisco.  
Cause called and argued by Frederick Christian Roesti, counsel for appellant, and Celia Wan-Tsing Lee, counsel for respondent. Cause ordered submitted.

**Court recessed until Tuesday, September 16 at 9:30 a.m.**

Monday, September 15, 2008(Continued)

Division Three

**A118435 – Eric Van Scoy, v. Valero Oil Company.**

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A117596 – Thomas J. Murray, v. United Services Automobile Association.**

**A117598 – Vincent B. McLord, v. United Services Automobile Association.**

The order denying USAA's motions to compel arbitration is reversed and the matter remanded to permit the trial court to reconsider the issue of severance of unconscionable provisions consistent with this opinion. Each party shall bear its own costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A117475 – Gas Pipeline Explosion Cases.**

By The Court: The petition for rehearing is denied. Pollak, J. Acting P.J.

**A120485 – Allen Bates et al., v. Granada Healthcare and Rehabilitation Center, LLC et al.**

The trial court's order denying appellants' motion to disqualify is affirmed.<sup>9</sup> Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Tuesday, September 16, 2008

Division One

**A120213 – Estate of Gertrude C. Daley, Deceased. Gregory P. O'Keeffe, and Administrator, etc., v. Ronald Daley.**

The order is affirmed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

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<sup>9</sup> We deny appellants' request for judicial notice of a deposition notice and an amended deposition in the *Paredes* lawsuit. We conclude review of these documents is not necessary to our rendering of the decision in this matter.



Tuesday, September 16, 2008(Continued)

Division Two

**A118594 – In re the Marriage of Joseph and Julita Morcoso. Joseph Morcoso, v. Julita Morcoso.**

The order denying Joseph's petition for an annulment and ordering both parties to bear their own attorney's fees with the exception of the prior \$5,000 award of fees to Julita is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, September 16, 2008

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Oliver and S. Wheeler, Deputy Clerk.

A120206 Charles Fonseca,  
v.  
Heather J. Fong.  
Cause called and argued by James Peterson, counsel for appellant, and Wayne K. Snodgrass, counsel for respondent. Cause ordered submitted.

A120305 Charles Moyer,  
v.  
Jon R. Vaught, et al.  
Cause called and argued by Anthony Caso, counsel for appellant, and Summer Smith, counsel for respondents. Cause ordered submitted.

At this point of the proceedings, Justice Haerle left the bench and Justice Richman joined the bench for the remainder of the calendar.

A117852 David Erwin,  
v.  
George Simon, et al.  
Cause called and argued by David Caldwell, counsel for appellant, and Thomas Nicholas Charchut, counsel for respondents. Cause ordered submitted.

A120879 Estate of Yvone Paul, Deceased.  
Henry Stevens,  
v.  
Yolanda Paul.  
Cause called and argued by Richard A. Canatella, counsel for appellant, and Peter Ludwig Levy, counsel for respondent. Cause ordered submitted.

A117909 Jorge L. Montiel,  
v.  
City and County of San Francisco.  
Cause called and argued by Curtis G. Oler, counsel for appellant, and Rafal Ofierski, counsel for respondent. Cause ordered submitted.

**Court recessed until 1:30 p.m..**

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, September 16, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Fredericks and S. Wheeler, Deputy Clerk.

- A118954      The People,  
                  v.  
                  Thomas Warren Haner.  
Cause called and argued by Jeremy T. Price, counsel for appellant, and Linda Murphy, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A119261      Alice Wong, et al.,  
                  v.  
                  Prudential Property and Casualty Insurance.  
Cause called and argued by Marcus Daniel Merchasin, counsel for appellants, and Roger William Sleight, counsel for respondent. Cause ordered submitted.
- A113265      Garrett McDonald, et al.,  
                  v.  
                  Thomas J. Carey.  
Cause called and argued by John Conneely Jr. and Kenneth J. Harrington, counsel for appellants, and Matthew A. Crosby, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**

Tuesday, September 16, 2008(Continued)

Division Three

**A118567 – The People, v. Damon Stuart.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Thursday, September 18, 2008

Division One

**A119519 – The People, v. Marques Whitaker.**

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Three

**A116362 – Center For Biological Diversity, Inc., et al., v. FPL Group, Inc., et al.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Certified for Publication.)

**A119490 – Helen Lynch, v. Murphy, Pearson, Bradley & Feeney et al.**

The trial court's judgment is affirmed. Appellant shall bear costs on appeal. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A116491, A117022 – Tricon Construction, Inc., v. Liberty Union High School District.**

The award of penalties and attorney fees under section 7107 is vacated. The award of interest under section 20104.50 is vacated. The award of expert fees under Code of Civil Procedure section 998 is vacated. The judgment is otherwise affirmed. The parties are to bear their own costs on appeal. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Thursday, September 18, 2008(Continued)

**A119344 – Hartford Accident & Indemnity Company, v. Pacific Gas & Electric Company.**

The judgment in favor of PG&E is reversed. On remand the trial court should vacate its order granting summary judgment in favor of PG&E and file a new order denying PG&E's motion for summary judgment. Plaintiff is awarded costs on this appeal. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Division Four

**A121260 – In re J.H., a Person Coming Under the Juvenile Court Law. The People, v. J.H.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

**A119188 – The People, v. Luis Antonio Caballero.**

The judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, September 18, 2008

A114948 Donald W. Dye,  
v.  
Caterpillar, Inc. et al,  
Cause called and argued by Ted W. Pelletier, counsel for appellant, and by Michael L.  
Fox and Don Willenburg, counsel for respondents. Cause ordered submitted.

A116022 Donald W. Dye,  
v.  
Eimco/Trident AKA Sandvik Mining, et al.,  
Cause called and argued by Ted W. Pelletier, counsel for appellant, and by Michael L.  
Fox and Don Willenburg, counsel for respondents. Cause ordered submitted.

A117951    The People,  
              v.  
              Cleaves Jaye Weaver,  
Cause called and argued by Ozro W. Childs, counsel for appellant, and by Mark S.  
Howell, counsel for respondent. Cause ordered submitted.

A116945 Jennifer Goldstein,  
v.  
Angela Lackard et al.,  
Cause called and argued by Jennifer Goldstein, appellant in pro per, and by Jessica R. MacGregor and Richard M. Grant, counsel for respondents. Cause ordered submitted.

At this point in the proceedings Justice Reardon left the bench and Justice Simons entered.

A119237 Sandra Crook,  
v.  
A.G. Edwards & Sons et al.,  
Cause called and argued by Thomas M. Peterson, counsel for appellants, and by Ellen Lake, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Reardon entered.

A119237 Joyce Heilig,  
v.  
Ralph E. Wood,  
Cause called and argued by Gary R. Kershner, counsel for appellant, and by John R. Vaught, counsel for respondent. Cause ordered submitted.

A119605 Orix Financial Services Inc.,  
v.  
Mike Kovacs et al.,  
Cause called and argued by Raymond A. Policar, counsel for appellant, and by Joshua D. Brysk, counsel for respondents. Cause ordered submitted.

At 11:41 p.m. the court recessed until 1:30 p.m.

A112684 The People,  
v.  
Philip Leo Sands,  
Cause called and argued by Carolyn Murry Hagin, counsel for appellant, and by Rene S. Chacon, counsel for respondent. Cause ordered submitted.

A120115 Michael Morales et al.,  
v.  
California Department of Corrections and Rehabilitation et al.,  
Cause called and argued by Michael J. Quinn, counsel for appellants, and by Bradley S. Phillips, counsel for respondents. Cause ordered submitted.

Court adjourned at 2:56 p.m.

\*Judge from Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Friday, September 19, 2008

Division Two

**A118912 – Estate of Laura Lane, Deceased. Thomas Paige et al., v. Cynthia Lane.**

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A120421 – The People, v. Marcus Wade Smith.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

**A115293 – The People, v. Jereme Scott Gromer.**

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A121698 – The People, v. Alex Kerr.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A120250 – In re C.H., a Person Coming Under the Juvenile Court Law. The People, v. C.H.**

The disposition is affirmed. Jones, J., We Concur: Simons, J., Reardon, J.<sup>10</sup> (Not for Publication.)

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<sup>10</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 19, 2008(Continued)

**A117394 – Contempo Marin Homeowners Association, v. Manufactured Home Communities, Inc., ET AL.**

The order on the attorney fees motions us affirmed. The Association is entitled to its fees and costs on appeal. Reardon, J.<sup>11</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A118209 – The People, v. Jerome Houston.**

The judgment is affirmed. Jones, P.J., We Concur: Needham, J. Reardon, J.<sup>12</sup> (Not for Publication.)

**A122302 – J.H., v. The Superior Court of Del Norte County, Del Norte County Department of Health & Human Services, R.I.P.**

The order to show cause is discharged, and Mother's petition for extraordinary writ is denied on the merits. (Cal. Rules of Court, rule 8.45(i).) Reardon, J.<sup>13</sup>, We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Monday, September 22, 2008

Division One

**A115570 – All Coast Forest Products, Inc., v. City of Cloverdale, State of California.**  
By The Court: The petition for rehearing is denied. Margulies, J. Acting P.J.

**A119733 – Stephen Salinas, v. Paolo Martin.**

The petition for rehearing is denied. Swager, J. Acting P.J. (Certified for Publication.)

Division Two

**A120305 – Charles Moyer, v. Jon R. Vaught et al.**

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<sup>11</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>12</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>13</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, September 22, 2008(Continued)

The judgment is affirmed. Moyer is to pay the costs on appeal. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A119762 – In re I.G., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. Alicia G.**

The findings and orders of the juvenile court are affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A115257 – The People, v. Ricardo Arana et al.**

Judgment as to both defendants is affirmed.<sup>14</sup> Jenkins, J. We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

Tuesday, September 23, 2008

Division One

**A120202 – The People, v. Benny Jasper.**

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A121508 – The People, v. Jedadiah Renda.**

After a full review of the record, we find no arguable issues and, accordingly, affirm the judgment. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A120294 – The People, v. Kanuri Qawi.**

The finding that defendant is incompetent to stand trial is affirmed; the order that defendant may be involuntarily medicated is reversed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A118615 – The People, v. Timothy P. Graff.**

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<sup>14</sup> Defendant Ricardo Arana's request for judicial notice, filed September 11, 2007, raises issues more appropriate for habeas review and is therefore denied.

Tuesday, September 23, 2008(Continued)

The judgment is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A118718 – Michelle Verdin De Costa, v. Northstar Risk Management & Insurance Services, Inc.**

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A121093 – The People, v. Nicholas John Martinez, Jr.**

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A118326 – Kevin-Paul Woodruff, v. State of California et al.**

The order and judgment of dismissal is affirmed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A116446 – The People, v. Steven Jesus Lomeli.**

The portion of defendant's appeal taken from the denial of his motion to withdraw his plea is dismissed. The imposition of sentence is reversed, and the matter is remanded to the trial court for resentencing consistent with the requirements of *Blakely, supra*, 542 U.S. 296 and *French, supra*, 43 Cal.4th 36. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A120449 – In re K.H., a Person Coming Under the Juvenile Court Law. The People, v. K.H.**

Accordingly, the judgment is affirmed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A118084, A118452 – Patricia Gridley, et al., v. Michael A. Gridley, et al.**

**A120925 – Michael A. Gridley, et al., v. The Superior Court of San Francisco County, Patricia Gridley, et al., R.P.I.**

The orders denying appellants' motion to disqualify Winslow and the April 2007 order are reversed. The petition for writ of mandate is summarily denied. This case is remanded to the probate court for further proceedings consistent with this decision. Appellants are to recover their

Tuesday, September 23, 2008(Continued)

costs in this consolidated appeal and writ proceeding. Haerle, J., We Concur: Kline, P.J., Richman, J. (Certified for Publication.)

**A117113 – Maria Gonzalez-Malik, v. Superior Court of California, County of San Francisco.**

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A113827 – The People, v. Douglas Conerly et al.**

Defendants' convictions for receiving stolen property under count four are vacated. The judgments are affirmed in all other respects. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A119039 The People, v. Jack Robert Padia.**

**A121471 – In re Jack Robert Padia, On Habeas Corpus.**

The trial court is directed to prepare an amended abstract of judgment reflecting its oral pronouncement of judgment staying only count 4 pursuant to section 654 and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment in case No. A119039 is affirmed. The petition for writ of habeas corpus in case No. A121471 is denied. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, September 23, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Sepulveda, Acting P.J., Rivera, J., and Haerle, J. of Division Two (by assignment); Annie Reasoner, Deputy Clerk; CHP Officer Kevin Bartlett, Bailiff.

A115269      Kahane v.  
Jensen, et al  
Cause called. Lorraine Walsh argued for appellant Kahane. Samuel Golstein argued for respondent Schwartz. Bruce McArthur argued for respondent Jansen. Cause submitted.

At this point, Haerle, J. left the bench and Ruvolo, P.J. joined the bench. Argument continued before Ruvolo, P.J., Sepulveda, J. and Rivera, J.

AA120914      John Kast  
v.  
Anna Karin Antonsson  
Cause called. Appellant Anna Antonsson argued in propria personam. Kevin Greenquist argued for respondent Kast. Cause submitted.

A115278      People  
v.  
Tony John James  
Cause called. Victor Morse argued for appellant James. Violet Lee argued for respondent People of the State of California. Cause submitted.

At this point, Rivera, J. left the bench and Reardon, J. joined the bench. Argument continued before Ruvolo, P.J., Sepulveda, J. and Reardon, J.

A120768      People  
v.  
Norman Yung Yuen Hsu  
Cause called. Somnath Chatterjee argued for appellant Hsu. Martin Kaye argued for respondent People of the State of California. Cause submitted.

At this point, Ruvolo, P.J. left the bench and Rivera, J. rejoined the bench. Argument continued before Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A117798      Joseph Royse v. Lexington Insurance Company  
A117875      Joseph Royse v. DC3-E

(consolidated cases)

Causes called. William Bragg argued for appellant Royse in both cases. Michael Johnson argued for respondent Lexington Insurance Company in case A117798. Michael Shepherd argued for appellant DC3-E in case A117875. Causes submitted.

Court was adjourned at 11:40 a.m.

Tuesday, September 23, 2008(Continued)

Division Five

**A117951 – The People, v. Cleaves J. Weaver.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Reardon, J.<sup>15</sup> (Not for Publication.)

**A119806 – Loli Victoria Wang, v. Pacific Gas & Electric Company.**

The judgment is affirmed. PG&E is awarded its costs on appeal. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>16</sup> (Not for Publication.)

**A118404 – Joyce S. Heilig, v. Ralph Wood.**

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.<sup>17</sup> (Not for Publication.)

Wednesday, September 24, 2008

Division One

**A119574 – Estate of Louis Morra, Deceased. John Morra, v. Bobbye Morra.**

The probate court's order approving the petition for final settlement and denying reimbursement of John Morra's attorney fees is reversed for the reasons stated. The matter is remanded to the probate court for further proceedings consistent with this decision. John Morra shall recover costs on appeal. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A119018 – Joseph L. Grosser et al., v. Leroy Moyers.**

The order denying the anti-SLAPP motion is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

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<sup>15</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>16</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>17</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Wednesday, September 24, 2008(Continued)

Division Two

**A118129 – The People, v. Jonathan Colt.**

The judgment is affirmed and this case is remanded to the superior court so that it can modify the May 18, 2007, order in a manner consistent with our decision. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

**A120665 – In re S.T., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services, v. A.F.**

The order denying Mother's section 388 petition and the order terminating parental rights are affirmed. Judgment affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A119348 – Mercedes Villagomez et al., v. Contra Costa County et al.**

**A119353 & A119385 – Catalina Alejandre et al., v. Contra Costa County et al.**

The judgments are affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A120815 – In re R.H., a Person Coming Under the Juvenile Court Law. The People, v. R.H.**

While we affirm the judgment, we remand for the limited purpose of the court's fulfilling its obligation to declare the status of the finding. Reardon, J.<sup>18</sup> We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A121233 – The People, v. Nighia Trung Truong.**

We do not see the foregoing as an arguable issue and, finding no others, affirm the judgment. Reardon, J.<sup>19</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

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<sup>18</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>19</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 24, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Siggins, J.; and F. Castuera, Deputy Clerk.

A120182 PEOPLE,  
v.  
DUAYNE BARTSCH,  
Cause called and argued by Jeremy Price, counsel for appellant, and Brent Wilner, counsel for respondent. Cause ordered submitted.

A120576 SN SANDS,  
v.  
CITY AND COUNTY OF SAN FRANCISCO,  
Cause called and argued by Vince Chhabria, counsel for appellant, and Neil O'Donnell, counsel for respondent. Counsel for appellant was granted to file a supplemental brief not to exceed two pages and due on 09/26/08. Cause ordered submitted.

A119166 CHARLES SPRINCIN et al.,  
v.  
BRIAN NEWCOMB,  
Cause called and argued by Nancy Perham, counsel for appellants, and Bradley Zamczyk, counsel for respondent. Cause argued and submitted.

At this point, Siggins, J., left the courtroom. Jenkins, J. joined the bench.

A119675 PEOPLE,  
v.  
CLINT HARBOUR,  
Cause called and argued by Brian Newman, counsel for appellant, and Rebecca Arons, counsel for respondent. Cause ordered submitted.

CONTINUED

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 24, 2008

- A117767    LESLIE QUOCK,  
              v.  
              THERESA LEAVER QUOCK,  
Cause called and argued by Bernard Wolf, counsel for appellant, and Stephanie  
Finelli, counsel for respondent. Cause ordered submitted.
- At this point, Pollak, J. left the bench and Siggins, J. joined the bench.
- A119941    In re RYAN K., a Person Coming Under the Juvenile Court Law.  
              PEOPLE,  
              v.  
              RYAN K.,  
Cause called and argued by Violet Grayson, counsel for appellant and Jeffrey Bryant,  
counsel for respondent. Ms. Grayson appeared via telephone conferencing. Cause  
ordered submitted
- A119789    CHRISTINE EARNSHAW,  
              v.  
              KARL NICHOLAS  
Cause called and argued by Karl Nicholas, In Pro Per, and Daniel Sharp, counsel for  
respondent. Cause argued and submitted.
- A114353    WALTER PYLE,  
A117105    v.  
              DANIEL HOROWITZ,  
Cause called and argued by Frances Kaminer, counsel for appellant, and Peter  
Weber, counsel for respondent. Also, Peter Goldstone argued as counsel for  
respondent, Robin Dubner. Cause ordered submitted.

COURT ADJOURNED

Thursday, September 25, 2008

Division One

**A120311 – Demas Yan, v. Sing Tao Newspapers San Francisco LTD., et al.**

The order is reversed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A119025 – John Doe, Jr., v. Michael Johnston et al.**

**A121090 – John Doe, Jr., v. Michael Johnston et al.**

The orders are affirmed. Swager, J., We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A118408 – Paul D. Stutrud et al., v. City of Rohnert Park.**

That portion of the order striking the prayer request for attorney fees is reversed. The order is affirmed in all other respects. The parties shall bear their respective costs of appeal. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

**A117682 – Bambi Waterman, v. Evergreen At Petaluma, LLC.**

The order denying arbitration is affirmed. Plaintiff is entitled to recover her costs on appeal. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A120280 – In re A.V., a Person Coming Under the Juvenile Court Law. The People, v. A.V.**

The orders appealed from are reversed. Rivera, J., I Concur: Reardon, J., I Concur: in the judgment only: Ruvolo, P.J. (Not for Publication.)

Division Five

**A119556 – In re N.R. et al., Persons Coming Under the Juvenile Court Law. Catherine R., v. Sonoma County Human Services Department.**

Thursday, September 25, 2008(Continued)

The September 13, 2007 order summarily denying Catherine's section 388 petition is affirmed. Reardon, J.<sup>20</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, September 26, 2008

Division Two

**A119723 – In re B.C. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. M.V.**

The order is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A118954 – The People, v. Thomas W. Haner.**

The trial court's amended commitment order filed on February 2, 1999, is vacated. This matter is remanded to the trial court for reinstatement of the court's original commitment order and any other proceedings not inconsistent with this opinion, including proceedings to determine whether defendant is still in need of mental health treatment. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A119555 – In re G.O. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. G.O., Sr. et al.**

The juvenile court's orders are affirmed.<sup>21</sup> McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

Division Four

**The People, v. Corey Marques Jasmin.**

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<sup>20</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>21</sup> Minors' counsel, on behalf of J.O., filed a motion to take post-judgment evidence, contending that the new evidence rendered some of the issues raised on appeal by the parents "technically moot." Father filed a response objecting to the consideration of the evidence. In light our conclusion that all of the arguments lack merit, we deem it unnecessary to consider post-judgment evidence to determine whether the issues are also moot.

Friday, September 26, 2008(Continued)

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication.)

**A118006 – Christopher Appleton, v. Pin Lian Tu.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A119072 – The People, v. Douglass Borngeser.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>22</sup> (Not for Publication.)

**A118498 – David Eby, v. Philip Dejong.**

The judgment on the verdict and the trial court's order denying plaintiff's motion for new trial are affirmed. The trial court's order granting defendant's motion for a setoff and denying plaintiff's request for priority payment of attorney fees and costs is reversed, and the matter is remanded to the trial court for equitable apportionment of reasonable attorney fees and litigation expenses and the entry of a new and different order requiring payment of such amounts first from the judgment. Each party shall bear his own costs on appeal. Reardon, J.<sup>23</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, September 29, 2008

Division Two

**A119362 – Robinson Rancheria of Pomo Indians, v. Kenya Anderson et al.**

The judgment of dismissal is reversed. The order sustaining the demurrer without leave to amend is reversed and modified to grant the demurrer, with leave to amend, for failure to state a cause for breach of fiduciary duty. Costs to plaintiff. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

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<sup>22</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>23</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, September 29, 2008(Continued)

**A119860 – The People, v. Jose Valencia-Galvez.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A113265 – Garrett McDonald, et al., v. Thomas J. Carey.**

The judgment is affirmed. Defendant is awarded costs of the appeal. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

Division Three

**A121041 – In re D.C., Jr., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau, v. D.C., Sr.**

The orders terminating appellant's parental rights are affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Four

**A121698 – The People, v. Alex Kerr.**

By The Court: The opinion filed September 19, 2008, is modified by deleting footnote 3. The above modification does not effect any change in the appellate judgment. (Cal Rules of Court, rule 8.26(c)(2).) Ruvolo, P.J. (Not for Publication.)

**A120507 – In re B.H., a Person Coming Under the Juvenile Court Law. The People, v. B.H.**

The order is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A118948 – The People, v. James Douglas Brown.**

The condition of probation ordering that defendant have no contact with Cynthia and Don Stephens is therefore ordered stricken. In all other respects, the judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A120256 – Catalina Alejandre et al., v. Valleycrest Companies.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Monday, September 29, 2008(Continued)

**A117066 – Victor Ruiz, JR., etc., et al., v. M S P Trucking et al.**

The judgment is affirmed. Rivera J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.) (Not for Publication.)

**A115149 – The People, v. Edward Lee Smith.**

In all other respects, the judgment is affirmed.<sup>24</sup> Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, September 30, 2008

Division One

**A119607 – August Fay et al., v. Bruce May.**

The order of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A118965 – The People, v. Anthony L. Hands.**

Accordingly, the judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A119995 – The People, v. Charles Thomas Jones.**

Appellant's convictions in case No. CR908439 is vacated and the case remanded to the trial court with instructions to proceed as indicated above with regard to the claim of ineffective assistance of counsel on the first motion to suppress. If the trial court ultimately vacates appellant's conviction in that case, it should then consider anew appellant's sentence in case No. CR908705. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A119166 – Charles M. Sprincin et al., v. Brian W. Newcomb.**

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<sup>24</sup> We consider Smith's related petition for writ of habeas corpus (case No. A118636) on ineffective assistance of counsel grounds by separate order.



Tuesday, September 30, 2008(Continued)

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A119941 – In re R.K., a Person Coming Under the Juvenile Court Law. The People, v. R.K.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A119789 – In re the Marriage of Christine Earnshaw and Karl Nicholas. Christine Earnshaw, v. Karl Nicholas.**

The orders of the court are affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A114353 – Walter K. Pyle, v. Daniel A. Horowitz, et al.**

**A117105 – Walter K. Pyle, v. Daniel A. Horowitz.**

In case No. A114353, the orders granting the special motions of Daniel A. Horowitz and Robin A. Dubner to strike the complaint pursuant to section 425.16 and the judgments entered in their favor are affirmed. Horowitz and Dubner are awarded costs on appeal in case No. A114353. In case No. A117105, the order denying Daniel A. Horowitz's motion for relief pursuant to section 473 is affirmed. Walter K. Pyle is awarded costs on appeal in case No. A117105. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A120576 – SN Sands Corporation, v. City and County of San Francisco.**

The order granting the petition for writ of mandate is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Certified for Publication.)

**A119675 – The People, v. Clint Harbour.**

The judgment is modified to impose the upper term of five years for the violation of Health and Safety Code section 11352, subdivision (a), to be served consecutively with the one-year enhancement under Penal Code section 667.5, subdivision (b), for a total prison term of six years. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the Department of Corrections and Rehabilitation. Except as so modified, the judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

**A121723 – Jamal Sanad, v. Mohsin Sharif.**

Tuesday, September 30, 2008(Continued)

The motion to dismiss the appeal from the default judgment is granted. The motion to dismiss the appeal from the order denying the motion to vacate the judgment is denied. Issues concerning costs will be resolved at the conclusion of the present appeal. Sanad's request for sanctions is denied. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A119070 – In re the Marriage of Mark E. Nichols and Wendy D. Nichols. Marke E. Nichols, v. Wendy D. Nichols.**

The judgment is affirmed. Respondent shall recover her costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A117767 – In re the Marriage of Theresa Leaver Quock and Leslie Quock. Leslie Quock, v. Theresa Leaver Quock.**

The final judgment is reversed in part. As provided for this opinion, we remand the matter to the trial court for the limited purposes of: (1) ensuring that Theresa receives an additional \$3,800, representing one-half the tax-affected amount of dividends earned on the RSR shares from June 2004 through December 2005; (2) confirming that Theresa was paid for her share of the dividends earned on the benefit restoration program, as valued on a date as near as practicable to the date of trial; and (3) ensuring that Leslie was charged for the \$33,457 advance he was found to have received from the community. In all other respects, the final judgment is affirmed.<sup>25</sup> The parties are to bear their own costs on appeal. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A118303, A118679 – Peninsula Guardians, Inc., v. Peninsula Health Care District et al.**

The trial court's order sustaining the District's and MPHS's demurrers to plaintiff's first and second causes of action under section 32126 is affirmed. The trial court's order granting summary judgment to the District on plaintiff's fifth cause of action under section 54964 is affirmed. The trial court's order denying plaintiff's post-judgment section 473 motion is reversed and the trial court's judgment of May 25, 2007, is vacated. The case is remanded so that plaintiff may file an amended complaint alleging a claim against the District Under *Stanson*. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A118420 – The People, v. Jose Pinon Urbina.**

The judgment is reversed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

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<sup>25</sup> We decline Leslie's request that we further remand to the trial court for reconsideration of the spousal support and attorney's fees orders.

Tuesday, September 30, 2008(Continued)

**A112220 – The People, v. Larry Brant Sargeant.**

Our prior decision in this matter is vacated. The judgment is affirmed in all respects. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A119824 – In re C.S., a Person Coming Under the Juvenile Court Law. The People, v. C.S.**

The dispositional order is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A120222 – Donald Hobbs, v. Marin County Employees' Retirement Association.**

The judgment is affirmed. Costs on appeal are awarded to County. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A120885 – The People, v. Arturo Ambriz.**

The trial court is directed to prepare an amended abstract of judgment listing the enhancement charged and pled to as section 12022.53, subdivision (b); the trial court is directed to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A119660 – The People, v. Jose Baez.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Certified for Partial Publication.)

**A119716 – The People, v. Eddie Dean Carson.**

The judgment is affirmed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A116892 – The People, v Lyndon Caoyonan.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

Tuesday, September 30, 2008(Continued)

**A119605 – Orix Financial Services, Inc., v. Mike Kovacs ET AL.**

The judgment is affirmed. Respondent to receive costs on appeal. Reardon, J.<sup>26</sup> We  
Concur: Simons, Acting P.J., Needham, J. (Certified for Publication.)

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<sup>26</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.